

STATE HOUSING APPEALS BOARD

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DRAFT

Minutes of the September 17, 2007 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on September 17, 2007 at Middletown Town Hall.

ATTENDANCE

The following Board members attended the meeting: Mary Shekarchi, Chair, Donald Goodrich, Charles Maynard, Steve Ostiguy, William White, Cynthia Fagan and M. Theresa Santos. Steven M. Richard, legal counsel to the Board, Katherine Maxwell and Christine DaRocha, administrative staff to the SHAB were also present.

Chairwoman Shekarchi called the meeting to order at 2:03 p.m.

AGENDA ITEMS

1. Approval of Minutes of SHAB's January 26, 2007 meeting.

Minutes were approved by a vote of 6-0. Chairwoman Shekarchi abstained.

2. Approval of Minutes of SHAB's July 9, 2007 meeting.

Motion passed by a vote of 6-0. Mr. White abstained.

3. Docket Update by SHAB's Legal Counsel.

Mr. Richard provided an update concerning the Superior Court decision upholding SHAB's ruling granting master plan approval to the appellant in SHAB 2005-05 and summarized SHAB's upcoming appeals docket.

4. SHAB Reappointments.

Ms Maxwell stated that the terms of certain members were due to expire in January and she would be contacting these members concerning reappointments.

**5. Church Community Housing Corp. v. Town of Little Compton.
SHAB 2007-02**

a. Motion to Reduce SHAB Appeal Fees.

After hearing arguments from counsel, Mr. White moved to reduce the fees, Ms. Fagan seconded and the motion passed unanimously.

b. Motion to Intervene by Abutters.

Because of the unavailability of the abutters' counsel, Mr. Goodrich moved to continue this matter to a later date. Ms. Fagan seconded. Motion passed unanimously.

6. Sedona Associates, LLC v. Town of Smithfield. SHAB 2006-01

Chairwoman Shekarchi and Steve Ostiguy recused themselves from this matter. Mr. Goodrich served as acting chair.

On behalf of the developer, Michael Kelley, Esq. summarized the evidence presented during the local Smithfield Zoning Board review process. He argued that the board's decision was improperly characterized as an approval with conditions. He maintained that the reduction of units approved in the decision from the 74 requested to

37 amounted to a denial of the application. Mr. Kelly further argued that the development as proposed was consistent with the Smithfield Affordable Housing Plan and that the Zoning Board improperly reduced the number of allowable units.

The SHAB members questioned Mr. Kelley on the proper interpretation of the allowable housing densities in the Plan's tables.

Timothy Kane, Esq. argued on behalf of Smithfield. Mr. Kane contended that the Zoning Board had properly rejected the testimony of the developer's planning and real estate consultants and had properly acted when it accepted the testimony of the Town Planner and the advisory opinion of the Planning Board. Mr. Kane further maintained that the SHAB should grant appropriate deference to the Zoning Board's decision since that board is the body most familiar with town ordinances and the Affordable Housing Plan. Mr. Kane further contended that the language of SHAB's governing statute did not support consideration by SHAB of the developer's contention that the reduction of units rendered the project infeasible.

Mr. Kelley rejected the argument that SHAB should not consider the infeasibility of the project at the number of units indicated in the Zoning Board's decision. He argued that the standards of review in the statute were broad enough for SHAB to consider the financial feasibility of the project in its review of the zoning board's decision.

He further opined that the statute was unconstitutional as written.

The public hearing closed and the SHAB deliberated on the matters raised in arguments by counsel.

On the matter of SHAB's jurisdiction, Mr. Maynard moved that the proper characterization of decision of the Zoning Board was an approval with conditions. Mr. White seconded. Motion passed unanimously.

Upon deliberations, Mr. White moved to find that the Zoning Board's decision was consistent with the Smithfield Affordable Housing Plan. Ms. Fagan seconded. Motion passed unanimously.

Upon deliberations, Mr. White moved to find that Smithfield was meeting, or planned to meet its affordable housing needs. Ms. Santos seconded. Motion passed unanimously

The members discussed the relevant record evidence. Subsequently, Ms. Fagan moved to find that the Zoning Board properly considered the health and safety of existing and future residents. Mr. Maynard seconded. Motion carried unanimously.

Upon further deliberations, Mr. White moved to find that the Zoning Board properly considered environmental protection in its decision. Mr. Maynard seconded. Motion passed unanimously.

Upon stating her reasons based on the record evidence, Ms. Fagan moved to find that the Smithfield Zoning Board applied its review procedures evenly toward both subsidized and unsubsidized housing applications. Ms. Santos seconded. Motion passed unanimously.

The board deliberated further matters raised and briefed by counsel. On the matter of the effect of the absence of a floating zone ordinance, Mr. Goodrich moved to find that the lack of such ordinance did not adversely affect the developer's application. Mr. White seconded. Motion passed unanimously.

The members discussed the need to make a finding on the issue of infeasibility raised by the developer. Mr. Goodrich moved to find that since SHAB had found that the Zoning Board had acted in conformance with the Smithfield Affordable Housing Plan in its decision-making, there was no need to further consider the issue of infeasibility. Mr. White seconded. Motion passed unanimously.

Mr. White made a motion to affirm the decision of the Smithfield Zoning Board. Ms. Santos seconded. Motion passed unanimously.

A transcript of the entire hearing is available for public review and SHAB has issued a written decision explaining its findings and conclusions

ADJOURNMENT

A motion to adjourn passed unanimously and the meeting ended at 4:59 PM.

Respectfully submitted,

Donald Goodrich

Acting Chairman